

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: August 5, 2003

TO : Alan B. Reichard, Regional Director
William A. Baudler, Regional Attorney
Michael H. Leong, Assistant to Regional Director
Region 32

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Carpenters Local 751
(Largo Construction, Inc.)
Case 32-CB-5560-1

This case was submitted for advice as to whether the Union unlawfully failed to provide a Beck¹ disclosure indicating the breakdown of expenditures for "supplemental dues" collected from an objecting employee.

We agree with the Region that the Union violated Section 8(b)(1)(A) of the Act by failing to provide a Beck disclosure for the "supplemental dues."

FACTS

Dennis Schmidt is an employee of Largo Concrete, Inc. (the Employer), whose employees are represented by Carpenters Local 751 (the Union). The Employer and the Union are parties to the Carpenters Master Agreement for Northern California. The Master Agreement contains a standard union-security clause requiring covered employees to join and/or remain a member "of the Union or appropriate Local Union of the Union." In addition, the Master Agreement requires employers to contribute vacation and holiday benefits to the Carpenters Vacation and Holiday Trust Fund of Northern California, and to remit to the Union on a monthly basis a specified hourly amount deducted from the vacation and holiday benefits of every covered employee as supplemental dues. Pursuant to these provisions, the Employer contributes on Schmidt's behalf \$1.70 per hour to the Trust Fund, which Schmidt receives annually as vacation pay, and monthly remits to the Union \$.94 per hour on Schmidt's behalf as "supplemental dues."²

¹ Communications Workers of America v. Beck, 487 U.S. 735 (1988).

² The general system by which the Carpenters' supplemental dues are administered is described in detail in Associated

The Union has not provided the Charging Party or the Region with information as to how it spends supplemental dues, other than telling the Region that 4 cents of the 94 cents goes to a "political action committee," without further explanation as to the nature, purposes, or activities of that entity. However, there is no evidence, and the Charging Party has not alleged, that any of the supplemental dues funds are not regular and periodic dues, or are otherwise used for purposes inimical to public policy.

Schmidt sent a letter to the Union, in which he resigned his Union membership and sought to exercise his rights pursuant to Beck. Schmidt specifically objected to his dues being used for non-representational purposes and asked that his dues be reduced and escrowed pending the Union's furnishing of an accounting by an independent auditor. The Union accepted Schmidt's resignation and advised him that "you no longer have a membership dues obligation."³ The Union did not state, however, whether Schmidt would still have a supplemental dues obligation. In fact, on a monthly basis, the Employer still remits, and the Union still accepts, supplemental dues from Schmidt's pay. No Beck disclosure has been provided as to either regular membership dues, which the Union does not collect from Schmidt, or supplemental dues.

Builders and Contractors v. Carpenters Vacation and Holiday Trust Fund for Northern California, 700 F.2d 1269 (9th Cir. 1983), cert. denied 464 U.S. 825 (1983) (supplemental dues instituted in part to hire extra Union organizers not unlawful, despite an employer association's argument that the supplemental dues were for a prohibited political purpose, and that they violated Section 302 because employers initially sent deducted supplemental dues and Vacation Trust Fund amounts to employers' banks, rather than directly to the Union [the bank then sent the vacation benefits to the Trust Fund and the supplemental dues to the Union]. The Ninth Circuit found that using the supplemental dues to hire additional organizers was germane to the Union's representational duties, and not a political purpose proscribed by the First Amendment, and that the payment arrangements through the employers' banks were lawful).

³ The Union has subsequently made clear that Schmidt will not be charged any membership dues for the duration of the time he chooses to be a non-member and that he will be entitled to use the Carpenters hiring hall (although he will be required to pay the non-member hiring hall user fee charged to any non-member if he uses the hall).

Schmidt filed the charge in the instant case alleging that the Union violated Section 8(b)(1)(A) by failing to provide him with a Beck accounting of its expenses and by failing to immediately reduce his dues to an amount reflecting legitimate representational purposes.

ACTION

We agree with the Region that the Union's supplemental dues are regular and periodic dues exacted under a union-security clause and, therefore, that complaint should issue, absent settlement, alleging that the Union violated Section 8(b)(1)(A) of the Act by failing to provide Schmidt with a valid Beck disclosure for supplemental dues.

The Board has held that, when or before a union seeks to obligate an employee to pay dues and fees under a union-security clause, the union should inform the employee of the right: (1) to object to paying for extra-bargaining unit activities and to obtain a fee reduction; (2) to receive sufficient information to enable the employee to intelligently decide whether to object; and (3) to be told of any internal union procedures for filing objections.⁴ If an employee objects, the Board currently requires that the union must apprise the objector "of the percentage of the reduction, the basis for the calculation, and the right to challenge these figures," i.e., provide a Beck disclosure to the employee.⁵

Where unions inform employees that they no longer have any obligation to pay any union dues or fees, and will not in the future, the union has no obligation to provide a Beck disclosure.⁶ Thus, insofar as the Union has not

⁴ California Saw and Knife Works, 320 NLRB 224, 233 (1995), enfd. 133 F.3d 1012 (7th Cir. 1998), cert. denied, 525 U.S. 813 (1998). We are also urging the Board to require that unions set forth in this initial disclosure the amount of full union dues and the percentage reduction that Beck objectors would receive. See United Government Security Officers (MVM, Inc.), Case 5-CB-9447, Advice Memorandum dated April 29, 2003.

⁵ California Saw, 320 NLRB at 241-42.

⁶ See, e.g., Laborers International Union of North America, Local 265, 322 NLRB 294 (1996) (no violation in failing to provide Beck objector with financial information, where union expressly waived objector's obligations under union-security clause and informed objector she would not be required to pay any dues or fees). Cf., Teamsters Local

collected regular membership dues from Schmidt, and has informed him that it will not do so in the future, it did not violate the Act by failing to provide Schmidt with a Beck disclosure of its expenditure of regular dues funds.

The Union has not provided Schmidt with any Beck disclosure as to the supplemental dues, however, despite its continued collection of these dues. We agree with the Region that this violates Section 8(b)(1)(A) of the Act, despite these regular and periodic dues being called "supplemental." The supplemental dues come from required employer contributions of vacation and holiday benefits to the Carpenters Vacation and Holiday Trust Fund of Northern California, and are remitted for every covered employee on a monthly basis as a specified hourly amount to the Union.⁷ Thus, in the absence of any evidence or allegation that any of these funds are used for purposes inimical to public policy,⁸ it is clear that the supplemental dues should properly be considered uniformly required "periodic dues" that may lawfully be required under a union-security agreement,⁹ and that all such dues and fees are subject to the requirements of Beck.¹⁰ Therefore, to the extent that the Union has not relieved Schmidt of his supplemental dues

688 (Ravarino & Freschi, Inc.), 327 NLRB 1250 (1999) (violation where union failed to inform employee of decision to waive union security obligation).

⁷ As noted above, the Employer contributes on Schmidt's behalf \$1.70 per hour to the Trust Fund, which Schmidt receives annually as vacation pay, and monthly remits to the Union \$.94 per hour on Schmidt's behalf as supplemental dues.

⁸ We note that the deduction of the supplemental dues at issue has expressly been held lawful under Section 302. Associated Builders and Contractors v. Carpenters Vacation and Holiday Trust Fund for Northern California, supra, 700 F.2d at 1277.

⁹ See, e.g., Detroit Mailers Union No. 40, 192 NLRB 951, 951-952 (1971) (finding per capita taxes and special purpose dues to be "periodic dues"); Electrical Workers Local 48 (Kingston Constructors), 332 NLRB 1492, 1493, 1496-1497 (2000) (finding job targeting program dues to be "periodic dues").

¹⁰ See, e.g., California Saw, 320 NLRB at 224, 233, 235 fn. 59 (applying Beck to all dues and fees required under a union-security agreement, including initiation fees).

obligation, it violated Section 8(b)(1)(A) of the Act by not providing him with a valid Beck disclosure.

We would not, however, allege at this time that the Union improperly charged Schmidt for "political action committee" expenditures. Any such violation would be fully addressed if the Union were to forgo Schmidt's supplemental dues, as it has his regular membership dues, rather than prepare and provide a Beck disclosure. If the Union continues to require and collect Schmidt's supplemental dues, after providing him with a valid Beck disclosure, the Region should then investigate any allegation that the Union has improperly charged for expenditures that are not chargeable, consistent with GC Memorandum 98-11.¹¹ It is premature to make any determination as to the chargeability of any of the "political action committee" expenditures since the Union has provided Schmidt and the Region with no explanation as to the nature, purposes, or activities of the "political action committee" itself. In this regard, we note that the Board has found that certain expenditures that might reasonably be characterized as political action, such as legislative, executive, and administrative agency lobbying, may be chargeable where they concern matters that are germane to collective bargaining and representational activities.¹² Therefore, we would not allege at this time that the Union improperly charged Schmidt for "political action committee" expenditures.

Accordingly, the Region should issue complaint, absent settlement, alleging that the Union violated Section

¹¹ 98-11 states that in Beck unfair labor practice proceedings, the General Counsel has the burden of going forward with specific evidence that a union has claimed as chargeable expenditures that are not chargeable. Since the filing of an unfair labor practice charge by an objector does not trigger any duty of fair representation by a union, the union has no obligation to provide information to the General Counsel, or information beyond its disclosure to a Charging Party objector, simply in light of the charge. On the contrary, and in accord with long standing Board practice, the General Counsel looks to the Charging Party to provide enough evidence, or information pointing to evidence, of a violation to justify further investigation of the charge. Ultimately, however, the union has the burden of establishing that the fees charged are representational.

¹² See, e.g., Transport Workers Local 525 (Johnson Controls World Services), 329 NLRB 543, 544, 559-560 (1999).

8(b)(1)(A) of the Act by failing to provide a Beck disclosure indicating the breakdown of expenditures for "supplemental dues.

B.J.K.